

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICAH EDWARD WELLON,

Defendant-Appellant.

---

UNPUBLISHED

August 22, 2006

No. 259086

Wayne Circuit Court

LC No. 04-006823-02

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

MEMORANDUM.

A jury convicted defendant Micah Edward Wellon of possession of a firearm during the commission of a felony (felony-firearm),<sup>1</sup> felon in possession of a firearm (felon in possession),<sup>2</sup> and felonious assault.<sup>3</sup> The trial court sentenced Wellon to serve two years' imprisonment for felony-firearm, consecutive to concurrent terms of imprisonment of one to four years for felonious assault, and one to five years for felon in possession. Wellon appeals as of right. We affirm. We decide this appeal without oral argument.<sup>4</sup>

Asserting statutory privilege, Wellon argues that his wife should not have testified against him at trial without his consent. An earlier version of MCL 600.2162(2) did indeed place waiver of the privilege in the hands of the party spouse instead of the witness spouse.<sup>5</sup> However, 2000 PA 182 amended the statute, placing the decision whether to testify in criminal proceedings exclusively with the spouse whose testimony is sought. Thus, under the plain wording of the current version of MCL 600.2162(2), the privilege in question is the testifying spouse's to assert,

---

<sup>1</sup> MCL 750.227b.

<sup>2</sup> MCL 750.224f.

<sup>3</sup> MCL 750.82.

<sup>4</sup> MCR 7.214(E).

<sup>5</sup> See *People v Stubli*, 163 Mich App 376, 379; 413 NW2d 804 (1987), quoting MCL 600.2162 prior to 2000 amendment.

or waive, not that of the spouse for or against whom the testimony is sought.<sup>6</sup> Wellon points to nothing in the record that indicates that his wife did not provide her testimony willingly. Because the decision whether to testify against Wellon was Wellon's wife's to make, Wellon's trial attorney was not ineffective for failing to assert that privilege. "Counsel is not obligated to make futile objections."<sup>7</sup>

Wellon also argues that defense counsel erred in failing to introduce evidence of bad acts of certain prosecution witnesses. Because this argument is not set forth in the statement of the questions presented, we decline to address it.<sup>8</sup>

Affirmed.

/s/ William C. Whitbeck  
/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder

---

<sup>6</sup> MCL 600.2162(2) states: "In a criminal prosecution, a husband shall not be examined as a witness for or against his wife without his consent or a wife for or against her husband without her consent, except as provided in subsection (3)." None of the sub§ (3) exceptions are applicable here.

<sup>7</sup> *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989).

<sup>8</sup> See *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995). The argument is meritless in any event. Specific acts for the purpose of attacking witness credibility, other than convictions, may not be proved by extrinsic evidence. MRE 608(b).